

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

Application by Qwest Communications  
International, Inc. for Authorization Under Section  
271 of the Communications Act to Provide In-  
Region, InterLATA Service in the States of  
Colorado, Idaho, Iowa, Nebraska & North Dakota

WC DOCKET NO. 02-148

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**NORTH DAKOTA PUBLIC SERVICE COMMISSION  
COMMENTS REGARDING LATE-FILED  
INTERCONNECTION AGREEMENTS OF  
QWEST COMMUNICATIONS INTERNATIONAL, INC.**

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August 28, 2002

Susan E. Wefald, President  
Leo M. Reinbold, Commissioner  
Anthony T. Clark, Commissioner

North Dakota Public Service Commission  
600 East Boulevard  
Bismarck, ND 58505  
(701) 328-2400

The North Dakota Public Service Commission (NDPSC) respectfully submits its comments on the ex parte letter filed by Qwest with the Federal Communications Commission (FCC) regarding the filing of negotiated agreements between Qwest and competitive local exchange carriers.

The NDPSC wishes to reaffirm its conclusion that the issue being examined by the FCC in this comment period has remedies that are better implemented outside of the §271 process.

#### Review of the North Dakota record<sup>1</sup>

The issue of alleged “secret” interconnection agreements was first raised in an AT&T letter to the NDPSC dated February 28, 2002. The submission consisted of a series of press articles and a public copy of a Minnesota Department of Commerce complaint. AT&T raised no formal complaint at that time but requested the commission “investigate” the situation. At that time, Qwest responded to the AT&T request through filings with the NDPSC. The NDPSC instructed staff to monitor the unfolding situation and keep the Commission apprised of developments. At the very end of the NDPSC §271 investigation, the NDPSC received a motion from AT&T to reopen the public interest portion of our proceeding based on these same allegations. The NDPSC rejected the AT&T motion to reopen the public interest portion of our hearings.

The NDPSC rejected the AT&T motion for essentially two reasons:

1. The dispute over these un-filed agreements could be properly addressed in the course of a separate 47 U.S.C. §§251 and 252 complaint.
2. At the time the AT&T motion was before the NDPSC, Qwest had filed with the FCC a request for a declaratory ruling on the definition of

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<sup>1</sup> See Consultative Report of the North Dakota Public Service Commission, section X. Consultative Report on Public Interest, dated July 1, 2002, at pp. 257-270.

what constitutes an agreement that needs to be filed with the state commissions. For the NDPSC to engage in such a proceeding while a decision was pending from the FCC on the very same matter seemed a poor use of our limited staff resources.

Although the NDPSC rejected the motion to reopen and found the record did not warrant a denial recommendation on Qwest's §271 application, we remain committed to ensuring a nondiscriminatory telecommunications marketplace through a proper application of the law.

/s/  
Susan E. Wefald, President

/s/  
Leo M. Reinbold, Commissioner

/s/  
Anthony T. Clark, Commissioner

#### **ADDITIONAL COMMENTS**

##### Remedies Exist Outside of §271

The NDPSC respectfully asks the FCC to reject current suggestions that the Qwest 271 application be derailed over this dispute. We have concluded the public interest will be protected in the interconnection dispute regardless of §271 approval. That is because remedies exist for any Qwest noncompliance with §§251 and 252. On the other hand, the public interest will be damaged by unnecessary delay. Customers will be denied, indefinitely, the benefits of more robust competition in the telecommunications marketplace. Furthermore, the North Dakota telecommunications

marketplace will be denied the implementation of the Qwest Performance Assurance Plan.

Qwest has laid forth a course of action that, at first glance, should allay concerns on a going-forward basis. As of August 21, 2002, Qwest has filed with the NDPSC the agreements referenced in the ex parte letter. Those filings will be considered by the NDPSC as soon as practicable. In the interim, Qwest has indicated these documents will be available on its website for all competitors to review.

In summary, the NDPSC requests the FCC to arrive at the same conclusion the state commission has regarding these agreements. We believe the risks for on-going concerns have been mitigated, and in any instance, remedies exist outside the §271 process that will ensure the public interest is protected.

/s/  
Leo M. Reinbold, Commissioner

/s/  
Anthony T. Clark, Commissioner